IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1300 of 2002

with

CIVIL APPLICATION No 4500 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

GEB

Versus

RAMESHBHAI BHIKHABHAI

Appearance:

1. First Appeal No. 1300 of 2002

MS LILU K BHAYA for Petitioner No. 1

MR MEHUL S SHAH for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 18/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The Gujarat Electricity Board has preferred this appeal challenging the judgment and decree dated 7.3.2002 passed by the learned Civil Judge (S.D.), Dhoraji in Special Civil Suit No.62 of 2001 decreeing the said suit in part by awarding an amount of Rs.1,84,000/- with costs and with interest @ 9% per annum from the date of the suit till the deposit. It is the case of the plaintiff that, on 28.5.1990 at about 11.00 a.m, minor Ramesh, while playing, received electric shock when he touched electric pole. The victim sustained serious injuries on his abdomen, chest and face and, therefore, he was removed to the Government Hospital at Junagadh where his right-hand was amputed. The colour of his face was changed from black to white. The claimant filed the suit for a sum of Rs.3,00,000/- with 18% interest being the amount of compensation for permanent disability and loss of future income.

2. The learned counsel appearing for the appellant submitted that the pole was covered with guard-wire having a height of 7 ft. and, therefore, the Board has taken all reasonable care and protection to see safety of the people at large and as such the appellant cannot be said to be responsible for the occurrence of the accident.

3. On the question of quantum, it is the contention of the learned counsel that the respondent has sustained disability of 30% of the body as a whole and, therefore, even considering the income of the respondent at Rs.1,200/- per month, the respondent should have been awarded Rs.360/- per month as compensation and applying the multiplier of 15 thereon at Rs.64,800/- (Rs.360 x 12 x 15 = Rs.64,800/-). The submission of the learned counsel is that the trial court has committed error in awarding Rs.79,200/- more on this head.

4. From the evidence of the victim supported with the medical evidence at Exh.68 and the evidence of Dr.Govindji Mulji Makwana of Civil Hospital, Junagadh and Dr.Gadhvi, it is established beyond any manner of doubt that the victim sustained injuries because of the electric shock. The Deputy Engineer of the Board, Shri S.J.Patel (Exh.104), has tried to justify the stand taken by the defendant in the written statement by stating that there was no negligence on the part of the Board. Nothing is produced on the record to justify the stand

taken by the defendant. In view of this, we are clearly of the opinion that the victim sustained injuries because of the shock of the electric current passing through the pole in question.

5. On the question of quantum, the learned trial Judge has quantified the compensation after taking into consideration the injuries causing permanent disability to the extent of 60%. It is the contention of the learned counsel appearing for the appellant that the victim sustained disability of 30% on the body as a whole and, therefore, the amount of compensation is required to be sliced down accordingly. We do not see any merit in the said submission. This Court has, in RAMANBHAI KALIDAS DARJI v. BABUSING THAKORE reported in 2000 (2) G.L.H. (UJ) 7, in an identical situation, rejected the very contention advanced before us. In the said case, the appellant lost his left-hand from above the elbow, the doctor assessed the disability at 95% and it was contended that the same should be reduced to 50% considering the whole body. This Court was of the view that if the disability is functional, the same, under any guise, should not be reduced considering the whole body. In view of this, we do not see any substance in the second submission advanced before us. In our opinion, the appellant has lost his right-hand and, with only one hand, he will not be able to do his work as before. Hence, the disability assessed being functional, it cannot be reduced considering the whole body. In any case, while concurring with the reasoning of the learned trial Judge, we are of the opinion that this is not a case where the amount of compensation can be reduced on any head. There being no substance in this appeal, it is required to be dismissed. It is accordingly dismissed. R & P to be sent back to the trial Court forthwith.

6. We are told by the learned counsel appearing for the appellant that the appellant-Board has already deposited the amount of compensation together with the costs and interest before the trial Court. Hence, the trial Court is directed to disburse the amount to the claimant after proper verification.

7. Civil Application stands disposed in view of the order passed in the Appeal.

Sd/-

(K.R.Vyas, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)